

The 6th July, 1995

No. 14/13/87-6 Lab./182.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s. T.C. Haryana, Chandigarh, *versus* Shri Ram Parkash.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Ref. No. 138/93.

Between

1. THE MANAGEMENT OF M/S. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD

versus

THE WORKMAN NAMELY SHRI RAM PARKASH, C/O SHRI S. K. BAKSHI, ADVOCATE,
FARIDABAD.

Present:

Shri S. K. Bakhshi, for the workman

Shri R. P. Dagar, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana, referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endst. No. 18673—678, dated 26th May, 1993:—

Whether the termination of services of Shri Ram Parkash is legal and justified? If not, to what relief, is he entitled to?

2. Briefly stated the case of the workman is that he was appointed as helper by respondent No. 2 on 11th November, 1987 on regular basis but was paid wages as that of a helper appointed on daily wages basis. His services were terminated on 1st September, 1988 without any prior notice despite the fact that he had rendered service for a continuous period of more than 240 days. He made representation to the respondents and was taken back on duty on 2nd April, 1990. Then he had been working till 7th April, 1991 in the capacity of clerk and store keeper but was always paid wages of daily wages helper. His services were again terminated with effect from 8th April, 1991 without any reason and making payment of retrenchment compensation envisaged under section 25-F of the Act. The termination of his services is thus, illegal and unjustified. Consequently, he is entitled to be reinstated into service with full back wages and continuity in service.

3. The respondent No. 2 submitted written statement, dated 28th January, 1994 admitting the position stated by the workman except that he has worked as Diesel Pump Assistant/storekeeper. It was further stated that the workman had wilfully left the services on 8th April, 1991 and so he is not entitled to any relief.

4. The workman submitted rejoinder, dated 2nd March, 1994, re-asserting the previous averments and denying the averments of respondent No. 2.

5. On the pleadings of the parties, the following issues were framed:—

(1) Whether the termination of services of Shri Ram Parkash is legal and justified? If not, to what relief, is he entitled to? (as per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the evidence on record. My findings on the aforesaid issue are as follows:

Issue No. 1:

8. The respondents have examined one witness MW-1 Hemraj clerk and he deposed that the workman was appointed as helper on 11th April, 1990 as daily wages. His services were extended from month to month through orders Ex. M-1 to Ex. M-9. The workman himself had absented from duty with effect from 8th April, 1991 and had resumed duty on 15th April, 1991 but again he had been absent from duty since May, 1991.

9. On the other hand, the workman deposed the facts mentioned above.

10. On the basis of aforesaid evidence it has been submitted on behalf of the respondents that the workman was appointed as helper on daily wages basis for a fixed period of one month every time through orders, Ex. M-1 to Ex. M-9. The workman himself had abandoned the job having remained absent from duty. He was thus, not entitled to any retrenchment compensation envisaged under section 25-F of the Act. Consequently, the workman is not entitled to any relief.

11. In reply, it has been submitted on behalf of the workman that MW-1 Hemraj clearly admitted in his cross-examination that the workman had been working continuously as Diesel Pump Assistant at Sub-Depot, Hodel during the period from 1st April, 1990 to 15th April, 1991. It is thus, proved that the workman had rendered service for a continuous period of more than 240 days in 12 calendar months prior to the date of termination of his services. The perusal of appointment orders Ex. M-1 to Ex. M-9 produced by themselves clearly show that these orders were issued just by way of administrative necessity otherwise the post of Diesel Pump assistant on which he had been working continued even after the termination of his services. The workman was thus, entitled to the benefit under Section 25-F of the Act. admittedly the respondents did not comply with the provision of section 25-F of the Act and as such the termination of services is illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service with full back wages.

12. It is not disputed that the workman had rendered service under respondent No. 2 for a continuous period of more than 240 days prior to 8th April, 1991. The perusal of appointment orders, Ex. M-2 to Ex. M-3 shows that the workman was appointed as helper with effect from 1st April, 1990 to 31st July, 1990. The perusal of the appointment orders, Ex. M-5 to Ex. M-9, further shows that the workman was appointed as Diesel Pump Assistant on daily wages with effect from 1st August, 1990 to 31st March, 1991. The workman had thus, worked as Diesel Pump Assistant for a period of 240 days prior to the termination of his services. The plea taken by the respondents that the workman had been absent from duty can not be accepted as the respondents have not produced the attendance register for the period. Apart from this, it has been held by the Hon'ble Supreme Court of India in the case of D. K. Yadav, *versus* JMA Industries Ltd., FLW 1993 (67) 111 that it is incumbent upon the employer to give a reasonable opportunity to a workman to show cause before terminating the services on the ground of absence from duty. The respondents did not comply with this requirement. The termination of services of the workman effected in the manner reference to above is thus, illegal and unjustified. Consequently, it is held that the workman is entitled to be reinstated in to service as Diesel Pump Assistant with continuity in service and full back wages. The award is passed accordingly.

U. B. KHANDUJA,

Presiding Officer,
Labour Court II,
Faridabad.

The 6th January, 1995.

Endst. No. 114, dated 17th January, 1995.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA

Presiding Officer,
Labour Court-II,
Faridabad.